

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Video Description
of Video Programming

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MM Docket No. 99-339

PETITION FOR RECONSIDERATION

Turner Broadcasting System, Inc. ("TBS") hereby submits this Petition for Reconsideration in support of and as a supplement to the Petition for Reconsideration filed by the National Cable Television Association in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

TBS is a wholly owned subsidiary of Time Warner Inc. ("TWI"). TBS owns and operates satellite television networks in the United States and worldwide. In particular, TBS owns and operates two nonbroadcast networks in the United States that may be subject to the FCC's videodescription rules, Turner Network Television ("TNT") and TBS Superstation ("TBSS").¹ In addition, TBS owns and operates Turner Classic Movies ("TCM") which, as the Commission recognizes, is a pioneer in video description.

The rules established in the above-captioned proceeding place unmanageable burdens on nonbroadcast networks. For the reasons set forth below, the rules should be amended to count all programming run in prime time for purposes of Part 79; allow networks to file hardship

¹ See 47 C.F.R. § 79.3(b)(3).

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petitions; clarify the definition of prime time; and, in the case of one-transponder networks, to provide that prime time on the East Coast counts nationwide.

I. THE BURDENS OF THE PART 79 RULES SHOULD BE REDUCED

A. The 50-Hour Requirement Itself Imposes Significant Burdens.

Part 79 of the Commission's rules, 47 C.F.R. §§ 79.1 *et seq.*, requires covered networks to provide 50 hours per calendar quarter of video-described programming in prime time or children's programming.² The Commission should recognize that the rules inherently place significant burdens on nonbroadcast networks. For several years, until video-described programming is present in the pool of motion picture and off-broadcast network programming available for license, nonbroadcast networks will be forced to bear the entire cost of video describing 50 hours per calendar quarter for licensed product owned by others, as well as for original programming that they own. With respect to licensed programming, TBS believes such networks are unlikely to recover these costs from subsequent licensees or from program owners. By overly restricting the programming that may be counted for purposes of Part 79, the rules unnecessarily increase the already substantial burdens imposed by the rules.

B. Part 79 of the Commission's Rules Overly Restricts the Ability of Networks to "Count" Programming Toward the Video Description Requirements.

The Commission's Part 79 rules currently provide that networks may count each program only once for purposes of compliance with the rules, regardless of how many times the program is rerun by that network in prime time.³ To examine the impact of this rule, TBS analyzed programming carried on TNT and TBSS in the fourth quarter of 1999 through the third quarter of

² 47 C.F.R. § 79.3(b)(3).

³ 47 C.F.R. § 79.3(c)(2).

2000. Excluding sports, World Championship Wrestling (“WCW”) and programming already run on the network in prime time, TBS had fifty or more hours of first-run programming only in one quarter, the first quarter of 2000 (*see* Table I).⁴

TABLE I: PROGRAMMING IN ITS FIRST RUN PER NETWORK

Quarter	Total Hours	TBS First Hours					
		Series	Movies	Specials	Non Sports & WCW	Sports	WCW
1999Q4	286.8	1	37	0	38	35	25
2000Q1	286.8	12	41	3	56	40	25
2000Q2	286.8	10	21	1	32	104	23
2000Q3	286.8	13	30	1	44	94	25

SOURCE: TBS Research Department

TNT had fifty or more hours of such programming only in two quarters, the first and third quarters of 2001 (*see* Table II).

TABLE II: PROGRAMMING IN ITS FIRST RUN PER NETWORK

Quarter	Total Hours	TNT First Hours					
		Series	Movies	Specials	Non Sports & WCW	Sports	WCW
1999Q4	286.8	0	36	8	44	63	42
2000Q1	286.8	0	42	8	50	77	25
2000Q2	286.8	0	39	7	47	80	25
2000Q3	286.8	7	48	2	57	5	26

SOURCE: TBS Research Department

Much programming on nonbroadcast networks runs on more than one network in prime time. For example, many original movies that premiere on TNT are later run on TBSS. And programming premiered on HBO frequently runs in prime time on other nonbroadcast networks.

⁴ Prime time is defined, for purposes of Tables I, II, III and IV, as 8:00-11:00 p.m. Monday-Saturday and 7:00-11:00 p.m. on Sunday.

Yet under the Part 79 rules, a nonbroadcast network may not count programming even in its first run if that program already has been counted by another nonbroadcast network carried on the same MVPD.⁵ TBSS, for example, could not count its premiere of a program that had been counted by HBO, TNT, or any other top-five network.

Applying this test, TBS had less than thirty available hours (excluding sports and wrestling) from the fourth quarter of 1999 through the third quarter of 2000 (*see* Table III).⁶

TABLE III: PROGRAMMING IN ITS FIRST RUN ON ANY COVERED NETWORK

Quarter	Total Hours	TBS First Hours					
		Series	Movies	Specials	Non Sports & WCW	Sports	WCW
1999Q4	286.8	1	17	0	18	35	25
2000Q1	286.8	12	8	3	24	40	25
2000Q2	286.8	10	9	1	20	104	23
2000Q3	286.8	13	6	1	20	94	25

SOURCE: TBS Research Department

TNT also had less than thirty available hours in each of these quarters (*see* Table IV).

TABLE IV: PROGRAMMING IN ITS FIRST RUN ON ANY COVERED NETWORK

Quarter	Total Hours	TNT First Hours					
		Series	Movies	Specials	Non Sports & WCW	Sports	WCW
1999Q4	286.8	0	21	8	29	63	42
2000Q1	286.8	0	17	8	25	77	25
2000Q2	286.8	0	7	7	14	80	25
2000Q3	286.8	7	21	2	29	5	26

SOURCE: TBS Research Department

Tables I-IV clearly demonstrate that if no changes are made to Part 79, TBSS and TNT will be effectively forced to undertake very substantial video description of sports and/or

⁵ 47 C.F.R. § 79.3(c)(2).

wrestling programming. While TBS cannot provide the Commission with hard cost data at this time, it is clear that video description of sports programming is more expensive and far less satisfactory to users than video description of prerecorded entertainment programming. Since sports and wrestling have little useful life beyond their first run, the cost effectiveness of video description is further reduced. TBS urges the Commission to recognize that, for these reasons, video description of sports and wrestling should not be mandated through restrictions on the availability of programming eligible to be “counted”.

C. The Prime-Time and Children’s Programming Requirement By Itself is Sufficient Incentive to Create a Flow of New Video-Descripted Programming.

The detailed restrictions of Part 79 discussed above are not necessary to ensure a continued flow of new video-descripted programming. Because networks have every incentive to maximize audience in prime time, the Part 79 requirement that programming must be carried in prime time or children’s programming is already an adequate safeguard. No network would sacrifice viewership and advertising revenue in prime time in order to avoid video description.

II. THE DEFINITION OF PRIME TIME SHOULD BE CLARIFIED

A. The General Definition of Prime Time Should be Clarified.

The new Part 79 video description rules apply directly to thousands of cable systems and other MVPDs located in all four U.S. time zones, with the expectation that MVPDs will pass the requirements along to the five covered nonbroadcast networks. The Part 79 rules impose video description requirements with respect to “children’s programming” and “prime time”

⁶ The analyses in Tables III and IV are based on an examination of TBS, TNT and HBO, and assume that all are covered by the Part 79 rules. Data to determine the covered networks are not yet available.

programming, but do not define “prime time.” Nor, to TBS’ knowledge, does Nielsen Media Research, Inc. have a single definition of “prime time.”

The predominant definition of “prime time” in the industry is 8:00-11:00 p.m. local time in the Eastern and Pacific time zones Monday-Saturday, and 7:00-11:00 p.m. on Sunday. Under this definition, prime time in the Central time zone coincides with the Eastern time zone (an hour earlier local time). Prime time in the Mountain time zone is divided between prime time in the Pacific time zone and prime time in the Central time zone. “Prime time” for single-transponder networks like TBSS is considered to coincide nationwide with prime time in the Eastern time zone.

However, “prime time” is at times reported on the basis of 8:00-10:00 p.m. Monday-Sunday. Moreover, the Commission’s rules contain a more expansive definition of “prime time” for purposes of Part 76.⁷

The definition of “prime time” is important in defining which nonbroadcast networks incur Part 79 obligations, and in defining the time period in which these obligations must be carried out. If the many MVPDs subject to Part 79 adopt inconsistent definitions of “prime time,” the five covered nonbroadcast networks will be severely prejudiced. Given the importance of the definition, in order to avoid confusion, TBS respectfully urges the Commission to clarify its definition of “prime time” by rule or other authoritative pronouncement.

⁷ “Prime time” is defined in Part 76 as “[t]he five hour period from 6 to 11 p.m., local time, except that in the Central time zone the relevant period shall be between the hours of five and ten p.m., and in the Mountain time zone each station shall elect whether the period shall be six to eleven p.m. or 5 to 10 p.m.” The Part 76 definition by its terms applies only to broadcast stations, and not to nonbroadcast networks or MVPDs. 76 C.F.R. § 76.5(n).

**B. Prime Time for Single Transponder Networks
Should be Based on East Coast Prime Time Nationwide.**

TBSS from its launch in 1977 has served the entire United States with a single satellite transponder. Therefore programming shown at 8:00 p.m. in the Eastern time zone is seen at 5:00 p.m. in the Pacific time zone.

TBS respectfully requests the Commission to clarify that for single-transponder nonbroadcast networks, "prime time" nationwide will be considered "prime time" in the Eastern time zone. This coincides with Nielsen's standard practice. Failure to adopt this approach would either double the videodescription requirement imposed on single transponder networks like TBSS, or force the network to undertake the cost of an additional transponder solely to comply with the requirements of the videodescription rules.⁸

**III. BECAUSE NETWORKS ARE NOT ELIGIBLE TO FILE HARDSHIP
PETITIONS, THE PROBLEMS OUTLINED ABOVE MUST BE ADDRESSED
BY AMENDING THE RULES**

The Part 79 rules provide a process to petition the Commission for a full or partial exemption in case of hardship. However, the opportunity to petition is limited to video programming distributors, and the grounds for relief are limited to burdens placed on video programming distributors.⁹ As this petition demonstrates, the rules place substantial burdens on networks like TNT and TBSS, but neither TNT, TBSS nor any other network has the opportunity to petition for an exemption from the rules' requirements. Moreover, burdens on networks do not appear to be grounds for relief. Therefore, if the rules are not amended, networks are left with no recourse.

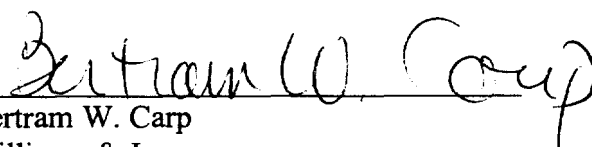
⁸ TBS' Worldwide Distribution Technology Department estimates these costs to be currently approximately \$1.8 million per year.

⁹ 47 C.F.R. § 79.3(d).

CONCLUSION

For the above reasons, TBS respectfully requests that the Commission reconsider its previous Order and amend the rules to make the burdens on broadcast networks manageable by making all programming run in prime time eligible to count under Part 79; by making networks eligible to file hardship petitions; by clarifying the definition of prime time; and, in the case of one-transponder networks, by providing that prime time on the East Coast counts nationwide.

Respectfully submitted,


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October 11, 2000

CERTIFICATE OF SERVICE

I, Tara M. Corvo, hereby certify that on this 11th day of October, 2000, I caused true and correct copies of the "Petition for Reconsideration" of Turner Broadcasting System, Inc. to be served via first class mail, postage prepaid, on the following:

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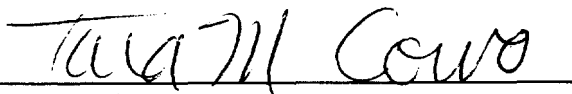
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